DATO' SERI TIONG KING SING

v.

DATUK JUSTINE JINGGUT

HIGH COURT SABAH & SARAWAK, BINTULU
SULAIMAN DAUD J
[SUIT NO: 22-14-2002]
3 JULY 2003

TORT: *Defamation - Libel - Pleadings - Defamatory statement published in Chinese newspapers - Failure to reproduce actual words of defamatory statement - Whether pleading rendered defective - Whether actual words of defamatory statement must be set out in pleadings - Whether an issue to be determined under O. 18 r. 19 Rules of the High Court 1980 - Whether a plain and obvious case where plaintiff's writ and statement of claim could be struck out for want of cause of action*

TORT: *Defamation - Libel - Newspaper articles - Publication - Whether defendant had knowledge of presence of reporters when uttering defamatory words - Whether a natural consequence for defamatory words to be republished in newspapers - Whether plaintiff had cause of action for libel against defendant*

TORT: *Defamation - Slander - Whether defamatory statement calculated to disparage the plaintiff in any office, profession, calling, trade or business - Whether such action for slander ought to be struck out for want of proof of damages - Defamation Act 1957, s. 5 - Whether issues only to be determined at trial proper*

CIVIL PROCEDURE: *Striking out - Action for libel and slander - Pleadings - Whether defective - Whether issues raised can be used as grounds for striking out plaintiff's action - Rules of the High Court 1980, O. 18 r. 19*

This was the defendant's application under O. 18 r. 19 of the Rules of the High Court 1980 ("RHC") to strike out the plaintiff's action for slander and libel. The plaintiff was a Member of Parliament and member of the Sarawak National Party (SNAP) ("the party") while the defendant was the Secretary General of the said party. The plaintiff's cause of action against the defendant was founded on a speech where he had allegedly spoken of

certain words in English defamatory of the plaintiff at the party's meeting on 28 July 2002 and on publications made on 29 July 2002 in four Chinese newspapers.

The issues that arose were: (1) whether the omission to state the actual words complained of in the language they were published in the Chinese newspapers rendered the plaintiff's pleading defective in an action for libel; (2) whether defendant cannot be liable for libel as the words complained of were spoken verbally; (3) whether the defamatory words complained of were calculated to disparage the plaintiff in his office, profession, calling, trade or business such as to invoke the application of s. 5 of the Defamation Act 1957.

Held:

[1] The omission to plead the actual words so spoken or published is not a fundamental defect which will nullify the pleadings. Although the alleged defamatory words were not stated in the statement of claim in the original language in which they were so published but such publication was specifically referred to in the statement of claim. Whether the exact words complained of, which is Chinese in the instant case, should be set out in the statement of claim is not an issue for determination under O. 18 r. 19(1)(a) of the RHC 1980. The translation of the alleged defamatory words in the English language (being the language of the court) in the statement of claim constitutes sufficient cause of action for the purpose of a striking out application. Whether the same is correct or accepted translation of the original publication is a question of fact to be determined at the trial proper. Here, it was not a plain and obvious case where the plaintiff's writ and statement of claim could be struck out for want of cause of action. (pp 438 g, 439 h & 440 a-b)

[2] It was clearly pleaded in the statement of claim that the defendant had knowledge of the presence of reporters when the alleged defamatory words were uttered and that the same would be published in the newspapers. It could be said the publication of such defamatory words by the said newspapers was the natural consequence of the statement made by the defendant. The defendant himself should know or ought to have known that the words spoken by him, owing to its nature and content, would be picked up by the reporters present for republication. Consequently, the plaintiff had a cause of action for libel against the defendant. (p 441 f-h)

[3] The court was empowered under O. 18 r. 19 Rules of the High Court 1980 or under its inherent jurisdiction to dismiss an action on the ground that the pleadings disclosed no reasonable cause of action, but such jurisdiction ought to be sparingly exercised. Whether the words complained of were capable of the defamatory meaning attributed to them could only be resolved at a trial, upon a consideration of the context and circumstances in which the statement was made as a whole. (p 444 c-f)

[4] By virtue of s. 5 of the Defamation Act 1957, a person who pursues any office, profession, calling, trade or business may have an action if slandered in respect of it. The question as to whether any or all of the designation or post held by the plaintiff as pleaded in the statement of claim fell under the category office, trade or business cannot be determined solely on the pleading. Such determination requires further evidence which can only be adduced by examination of witnesses at a trial. Likewise, the question as to whether the words complained of will disparage the plaintiff in such capacity is also a triable issue to be determined upon consideration of the context of the words and the circumstances in which the same were so uttered. Thus, this last issue cannot be used as a ground for striking out the plaintiff's action. (pp 445 e & 446 a-b)

[Application dismissed.]

Case(s) referred to:

Datuk Seri Panglima Joseph Pairin Kitingan v. Datuk Yong Teck Lee & Ors [1998] 2 CLJ 923 HC ***(refd)***

Hassan & Anor v. Wan Ishak & Ors [1961] 27 MLJ 25 ***(refd)***

Karpal Singh Ram Singh v. DP Vijandran [2001] 3 CLJ 871 CA ***(refd)***

Lim Kit Siang v. Datuk Ling Liong Sik [1975] 5 MLJ ***(refd)***

Mooney & Ors v. Peat, Marwick, Mitchell & Co & Anor [1967] 1 MLJ 87 ***(refd)***

New Straits Times (Malaysia) Bhd v. Kumpulan Kertas Niaga Sdn Bhd & Anor [1985] 1 MLJ 226 ***(refd)***

Slipper v. British Broadcasting Corp [1991] 1 All ER 165 ***(refd)***

Workers' Party v. Tay Boon Too [1975] 1 MLJ 47 ***(refd)***

Legislation referred to:

Defamation Act 1957, s. 5

Rules of the High Court 1980, O. 18 r. 19(1)(a), O. 78

Defamation Act 1952 [UK], s. 5

Supreme Court Rules [UK], O. 82 r. 3A

Other source(s) referred to:

Clerk & Lindsell on Torts, 16th edn, 1989, para 21-27, p 1098

David Price, *Defamation Law, Procedure & Practice,* 2nd edn, London Sweet & Maxwell 2001, para 3-08, p 24

Gatley on Libel and Slander, 9th edn, 1998, para 6.30, p 154; para 6.31, pp 155-156; para 26.42, p 675

For the plaintiff - Henry Ling Kuong Meng; M/s Ling & Wong
For the defendant - Chong Siew Chiang; M/s Chong Brothers

Reported by Suhainah Wahiduddin

JUDGMENT

Sulaiman Daud J:

This is the defendant's application under O. 18 r. 19 of the Rules of the High Court 1980 (the RHC 1980) to strike out the plaintiff's action for slander and libel herein.

The plaintiff's cause of action against the defendant herein is founded on a speech by the defendant on 28 July 2002, and on publications made on 29 July 2002 in four Chinese newspapers, namely, the See Hua Daily News, the International Times, the Chinese Daily News and the Miri Daily News. In this action the plaintiff claims against the defendant for general, aggravated and exemplary damages in the aggregate sum of RM26,000,000 for libel and slander in respect of such speech and publications, in addition to other injunctionary relief related thereto.

The relevant facts as averred in the statement of claim may be briefly stated. At all material times the plaintiff is a member of parliament and member of the Sarawak National Party (SNAP). The defendant is the Secretary General of the party. It is alleged that on or about 28 July 2002 at a meeting with members of the party and in the presence of all the persons present thereat, the defendant spoke of certain words in English defamatory of the plaintiffs. The words so spoken or words of the like effect were subsequently published in the four Chinese newspapers aforesaid.

The alleged defamatory words were set out in full in para. 4 of the statement of claim. The publication of the alleged defamatory words in the four newspapers were pleaded in paras. 6, 7, 8 and 9 respectively. However the actual words in Mandarin published in the newspapers which were alleged to be defamatory against the plaintiff were not reproduced therein. Only the translation thereof in the English language were set out in the pleading.

There were three grounds advanced by the learned counsel for the defendant in support of the application. Firstly the omission to state the words complained of in the language they were published in the Chinese newspapers is fatal in the plaintiff's action for libel. Secondly the defendant cannot be liable for libel as the words complained of were spoken verbally. Thirdly there is no pleading on special damages to sustain an action for libel.

I will deal with the first issue. The question to be answered is whether the words alleged to be defamatory of the plaintiff as published in the four Chinese newspapers must be reproduced in the pleading in their original language. Mr. Chong Siew Chiang, the learned counsel for the defendant submitted that the exact words so published which constitute the cause of action for libel must be pleaded. Any omission to reproduce the same will render the plaintiff's pleading defective in so far as it relates to an action of libel.

In support of the proposition the learned counsel cited *Workers' Party v. Tay Boon Too* [1975] 1 MLJ 47 (Singapore High Court), *Lim Kit Siang v. Datuk Ling Liong Sik* [1975] 5 MLJ and *Karpal Singh Ram Singh v. DP Vijandran* [2001] 3 CLJ 871.

In *Workers' Party v. Tay Boon Too*, the alleged defamatory words were spoken in Hokkien and in Singapore the language of the court is in English. It was held that if the slander alleged is in a language other than English it must be set out in the statement of claim in the foreign language precisely as spoken and followed by a literal translation. The absence of the original words in the foreign language in question is fatal.

In *Lim Kit Siang v. Datuk Dr. Ling Liong Sik & Ors*, the plaintiff's cause of action was founded on a speech by the first defendant and on a publication in the Star newspaper. It can be inferred therein that the alleged defamatory words were not spoken in Malay, being the language of the court. In striking out the plaintiff's application, the court held that the exact words as uttered must be reproduced in the original language with a certified translation in the language of the court, in the absence of which the claim will fail.

In *Karpal Singh Ram Singh v. DP Vijandran*, the respondent had sued the appellant for defamation based on a press release in the English language which was subsequently reported in two local English newspapers. In the pleading the respondent neither quote the whole of the press statement so

issued nor the whole of the report appearing in the newspaper. On the issue of pleadings, Abdul Hamid Mohamad JCA, after considering several English and local authorities said, at pp. 890 and 891:

> ... But, where the words have been published and are obtainable before the commencement of the action, on the authorities it appears to me that the actual words must be pleaded.

Mr Henry Ling, the learned counsel for the plaintiff, submitted that there is no express provisions in the Rules of the High Court 1980, particularly O. 78 thereof, which require the exact words uttered or published to be set out verbatim in the language in which the same were made. In support of his contention the court was referred to a former Court of Appeal case of *Hassan & Anor v. Wan Ishak & Ors* [1961] 27 MLJ 25. In that case the alleged defamatory words were spoken in Malay but in the statement of claim the said words were set out in English, being the language of the court at that time. One of the issue for determination therein is whether the alleged slander as proved at the trial must be set out in the statement of claim, the omission of which will render the pleading defective. On the point in issue, Thomson CJ said, at p. 46:

> As a matter of practice when defamatory words are alleged to have been spoken in a language other than the language of the Court these words should be set out in their original form in the pleadings and in addition a translation of them into the language of the Court should be pleaded. Admittedly that was not done here but, again, admittedly the point that it was not done was never raised at any stage of the proceedings or of the trial.
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> But although in my view the actual words used in the language in which they were used should have been pleaded the failure to do so cannot be held to have been fatal to the case of the respondents.

It appears to me from the aforesaid case that the omission to plead the actual words so spoken or published is not a fundamental defect which will nullify the pleadings. It is to be noted that in *Karpal Singh Ram Singh v. DP Vijandran*, Abdul Hamid Mohamad JCA referred to the judgment of Zainun Ali JC (as she then was) in *Lim Kit Siang v. Datuk Ling Liong Sik & Ors* and concluded that the judgment of the former Court of Appeal in *Hassan & Anor v. Wan Ishak & Ors* should be binding on her. Likewise based on the principle of *stare decisis* the said judgment is also binding on me.

It is also interesting to note that in *Karpal Singh Ram Singh v. DP Vijandran* although his lordship prefers the view that the statement must be set out in the original language in the statement of claim, but in my view his lordship's observation is only an obiter. In that case the court is concerned with the issue as to whether the actual words uttered as contained in the press statement must be pleaded. On that issue it was held that the failure to do so is not fatal.

While referring to the aforesaid cases, I am mindful that all these cases are concerned with issues raised at a trial and not related to striking out application which in my view will be subject to more flexible rules. In the O. 18 r. 19 application the court will only exercise its power thereunder with the greatest care and circumspection and only in the clearest case.

In the present case although the alleged defamatory words were not stated in the statement of claim in the original language in which they were so published but such publication was specifically referred to in para. 11 thereof which read:

> 11. Further, the said or similar words referred to in the aforesaid paragraphs 6,7/8 and 9 as published by SEE HUA DAILY NEWS, INTERNATIONAL TIMES, CHINESE DAILY NEWS and MIRI DAILY NEWS respectively are from their respective editions sold and distributed and readily available and read by readers in Bintulu, Sarawak. The issues of these newspapers sold and distributed in Bintulu were published on page D 10 in SEE HUA DAILY NEWS, page 6 in INTERNATIONAL TIMES, front page A1 in CHINESE DAILY NEWS and page 4 in MIRI DAILY NEWS. The plaintiff will refer to the original forms of the said publications and also refers to the meanings and effects of the said publications together with photographs if necessary and whole news item in these newspapers, each of which is translated into English, at the proceedings whenever the same are relevance to the case.

It is clear to me that in the present case the said publication have been sufficiently identified in the said para. 11 reproduced above. The defendant is entitled to put the plaintiff to proof of all facts alleged in the statement of claim by the production of the original publications and examination of witnesses. I agree with Mr. Henry Ling that the question of whether the exact words complained of, which is Chinese in the instant case, should be set out in the statement of claim is not an issue for determination under O. 18 r. 19(1)(a) of the RHC 1980. The translation of the alleged defamatory words in the English language (being the language of the court) in the statement of claim is in my view constitute sufficient cause of action

for the purpose of striking out application. Whether the same is the correct or accepted translation of the original publication is a question of fact to be determined at the trial upon examination of witnesses. It is open for the defendant to provide the court with his alternative version at the trial. In conclusion I will say that it is not a plain and obvious case where the plaintiff's writ and statement of claim could be strike out for want of cause of action. The defendant's objection on this ground must therefore fail.

Next I turn to consider the second ground. Mr. Chong Siew Chiang pointed out that the words complained of were spoken verbally, and by reason thereof it is submitted that the defendant cannot be liable for libel if the defendant's verbal statement were published by third party in permanent form.

The learned counsel relied on *Datuk Seri Panglima Joseph Pairin Kitingan v. Datuk Yong Teck Lee & Ors* [1998] 2 CLJ 923. In that case the plaintiff brought a suit against the defendant for alleged defamation in two speeches and one press statement made by the first defendant concerning the plaintiff. The speeches and press statement were published by the second and third defendants on three separate occasions in three separate articles. On the question as to whether the first defendant is answerable for slander only Suleiman Hashim J said, at pp. 937 and 938:

> ... in making the two speeches and one press statement first defendant was as were the defendants in the two cases, the first is a Singapore High Court case and the second is a Singapore Court of Appeal case:
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> (1) Tay Boon Too in *Workers' Party v. Tay Boon Too*, referred to by Counsel, when Tay made a speech at "a public election rally", Singapore High Court.
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> (2) Goh Chok Tong in *JB Jeyaretnam v. Goh Chok Tong*, reffered to by Counsel, when Goh Chok Tong "held a conference with the media", Singapore Court of Appeal.
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> And the cause of action against Tay Boon Too and Goh Chok Tong was for slander only, not slander and/or libel.

Based on the aforesaid authorities, the learned counsel concluded that since the fact of the present case is quite similar to that of *Datuk Seri Panglima Joseph Pairin Kitingan v. Datuk Yong Teck Lee & Ors*, the defendant in the present action is also not liable for libel in respect of the publications of the alleged defamatory words in the four Chinese newspapers.

Having read *Datuk Seri Panglima Joseph Pairin Kitingan v. Datuk Yong Teck Lee & Ors*, it is clear to me that the court came to such a conclusion merely on the fact that in the two cases referred to therein, the plaintiff only sued the defendant for slander based on the defamatory words in a speech by the plaintiff at an election rally. However in my opinion *Workers' Party v. Tay Boon Too* and *JB Jeyaretnam v. Goh Chok Tong* are not concerned with the point in issue before the court. These two authorities do not support the proposition that the person to whom the defamatory words relate has no cause of action against the maker thereof for libel if the same were subsequently picked up and published by a third party in a permanent form.

In the present case, it is pleaded in para. 5 of the statement of claim that the defendant has falsely and maliciosly intended to use, permit or cause the mass media or press to publish defamatory charges against the plaintiff, and the defendant well knew that the reporters of the newspaper were present at the said meeting and that his impugned statements against the plaintiff would be published in newspapers. It was further pleaded in paras. 6, 7, 8 and 9 that the defendant caused or permitted to be published in the respective newspapers the words set out therein which are alleged to be defamatory to the plaintiff.

It is settled law that in considering whether a statement of claim discloses any reasonable cause of action the statement of claim shall be presumed to be true and the court is not empowered to look behind the pleading (see *Mooney & Ors v. Peat, Marwick, Mitchell & Co & Anor* [1967] 1 MLJ 87). In the present action as can be seen it is clearly pleaded in the statement of claim that the defendant has knowledge of the presence of reporters when the alleged defamatory words were uttered and that the same would be published in the newspapers. At least such pleaded facts shall be presumed to be true especially in the present action where no defence has been filed by the defendant to rebut the said averment.

In the present action from the pleading as it stands, it appears to me that the plaintiff has a cause of action for libel against the defendant. It is alleged that the defamatory words were spoken by the defendant in the presence of newspaper reporters. It can be said the publication of such defamatory words by the said newspapers was the natural consequence of the statement made by the plaintiff. The defendant himself should know or ought to have known that the words spoken by him, owing to its nature and content, would be picked up by the reporters present for republication.

The law in this connection can be found in the passage from *Gatley on Libel and Slander* (9th edn, 1998) which read (at para 6.30 p. 154):

> Where a defendant's defamatory statement is voluntarily republished by the person to whom he published it or by some other person the question arises whether the defendant is liable for the damage caused by the further publication. In such a case the plaintiff may have a choice: he may (a) sue the defendant both for the original publication and for the republication as two separate causes of action, or (b) sue the defendant in respect of the original publication only, but seek to recover as a consequence of that original publication the damage which he has suffered by reason of its repetition, so long as such damage is not so remote. ... It is clear that if the republication was by a person for whom the defendant is vicariously liable under the principles of master and servant or agency the defendant is liable for that. Beyond this it may be that the original publisher should only be liable as publisher of the republished statement where he authorised it or intended it ... . In any event, the starting point is that the defendant is *prima facie* not liable because the voluntary act of a third persons breaks the chains of causation. However, the defendant is liable for the republication or for the damage caused by it:
>
> (1) where he authorised or intended the republication;
>
> (2) where the person to whom the original publication was made was under a duty to repeat the statement;
>
> (3) where the republication was, in the circumstances of the case, the natural and probable result of the original publication.

Further at para. 6.31 pp. 155-156, the learned author wrote:

> There are many cases in which the original publisher authorises or intends the republication. Thus if a person submits material to a newspaper or tells a reporter a story defamatory of the plaintiff without restriction on its publication, makes a statement at a press conference or issues a press release he will be liable for the publication in the newspaper. An express authority or request to publish is unecessary.

The said principles was also stated in David Price, *Defamation Law, Procedure & Practice,* 2nd edn, London Sweet & Maxwell 2001, which read (at para 3-08 p. 24):

> Where A communicates defamatory material to B and B then repeats it to others, it is clear that A will be responsible for the publication to B and B will be responsible for the repetition. This situation commonly arises where B is a journalist or a publisher, to whom A makes a statement. In such a case the repetition by B disseminates the defamatory obligations to

a far wider audience. The question arises as to whether A will be responsible for B's repetition. The court have held that A will be responsible in the following circumstances:

(1) Where A authorised or secured the repetition by B.

(2) Where there was a legal or moral obligation on the part of B to repeat.

(3) Where the repitition was the natural consequence of the publication by A to B. The same principles apply to subsequent repetitions.

In *Slipper v. British Broadcasting Corp* [1991] 1 All ER 165, it was held that although *prima facie* the court would treat the unauthorised repetition of a libel as novus actus interveniens which broke the chain of causation, nevertheless where it was appropriate on the particular facts the repetition of the sting of a libel by an authorised third party would be treated as the natural and probable consequence of the original publication so as to expose the original publisher to a claim for damages in respect of the repetition.

In my view the principles laid down in *Slipper v. British Broadcasting Corp* also apply to a situation where the stings of the words spoken were intended to be published by a third party.

In the present action it is expressly pleaded by the plaintiff in para. 5 of the statement of claim that reporters of the relevant newspapers were present at the meeting and that the defendant had intended or permitted the defamatory words spoken to be published in the said newspapers. From the pleading it also appears to me that the plaintiff is also relying on the conduct of the defendant and the circumstances in which the defamatory words were spoken to make the defendant liable for the subsequent publication of the alleged defamatory words. In my view the question as to whether or not the defendant had in fact intended or permitted or caused the publication of the defamatory words in the said newspapers so as to make him liable thereto depends on the facts concerning all the circumstances in which the same were spoken. In other words it is a triable issue involving question of facts to be decided at a trial. I therefore hold that this second ground cannot form the basis of the present striking out application.

The next issue taken up by the defendant's learned counsel is that the words complained of as set out in para. 8 and 9 of the statement of claim is incapable of bearing any defamatory meaning as alleged by the plaintiff. It is his submission that the court may at any stage after service of the

statement of claim determine whether or not the words complained of are capable of bearing particular meanings attributed to them therein. In support of the proposition the learned counsel referred to a passage to that effect in *Gatley on Slander & Libel*, 9th edn (at para 26.42 p. 675). However it is very obvious to me that the passage referred to is nothing more than the restatement of the law as provided in O. 82 r. 3A of Supreme Court Rules (UK). There is no such corresponding provisions under our rules.

It cannot be doubted that the court is empowered under O. 18 r. 19 of the RHC 1980 or its inherent jurisdiction to dismiss an action on the ground that the pleadings disclosed no reasonable cause of action but such jurisdiction ought to be sparingly exercised, and only in very exceptional cases. In *New Straits Times (Malaysia) Bhd v. Kumpulan Kertas Niaga Sdn Bhd & Anor* [1985] 1 ML) 226, Mohamed Azmi FJ, in delivering the judgment of the Federal Court said, at p 227:

> In a claim for damages for libel, it was held that the power under O. 18 r. 19(1)(a) could only be used in plain and obvious cases (see *Drummond-Jackson v. British Medical Association*) [1970] 1 WLR 688. The court will not strike out a pleading on the ground that the words are incapable of defamatory meaning but will leave the question whether they are capable of such meaning to be dealt with at a trial (see *Moore v. Lawsori*) [1915] 31 TLR 418.

Based on the aforesaid authority it is quite impossible for this court to determine at this stage of the proceedings whether the words complained of in para. 4, 6, 7, 8 and 9 of the statement of claim are capable of the defamatory meaning as attributed thereto in para. 12 thereof. It can only be resolved at a trial upon considering the context and circumstances in which the statement was made as a whole. Likewise the defendant will not succeed on this ground.

Mr. Chong Siew Chiang further argued that the words complained of made no reference to the plaintiff's office, profession, calling, trade or business at the time of the said publication. He pointed out that such words, even if truly spoken, were solely in relation to his expulsion as a member of SNAP, and therefore not capable of being calculated to disparage the plaintiff in his profession or calling and in the way of trade and business. On this point suffice for me to reiterate my earlier finding that the question as to whether the words complained of are capable of such meaning are triable issues to be dealt with at a trial. It is necessary to take into account, not only the actual words used, but also the context thereof and the circumstances in which the same were uttered.

Finally Mr. Chong Siew Chiang submits that the plaintiff had failed to allege special damage in the pleadings, thereby lacking an element of cause of action for slander. The learned counsel referred to para. 13 of the statement of claim and pointed out that there was no averment made therein that the words complained of were calculated to disparage the plaintiff in any office, profession, calling, trade or business for s. 5 of the Defamation Act 1957 to apply. In the absence of such proof of special damage the learned counsel concluded that the plaintiff has no cause of action for slander against the defendant.

Mr. Henry Ling countered the plaintiff's argument on this issue by drawing the court's attention to para. 1 of the statement of claim. It is expressly pleaded therein that the plaintiff is a member of parliament, a Justice of the Peace, the chief executive officer of Wijaya Baru Global Berhad and the advisers to numerous clubs and associations in Sarawak. He submitted that the words complained of do calculate to disparage the plaintiff in his office, profession, calling, trade or business which is actionable without proof of special damages even though not spoken directly to his vocation.

It appears to me that by virtue of s. 5 of the Defamation Act 1957 a person who pursue any office, profession, calling, trade or business may have an action if slandered in respect of it. In *Clerk & Lindsell on Torts*, 16th edn, 1989, the learned author stated, at para. 21-27 p. 1098:

> ... Where the defamatory words are spoken of the plaintiff in the way of his calling and disparage him therein they will be actionable *per se* under the old law. The extension of this category by the Defamation Act 1952 is that defamatory words may now be actionable *per se* even though they are not spoken of the plaintiff in the way of his calling provided that the particular imputation they convey is calculated to disparage the plaintiff in his particular calling ... .

It is to be noted that s. 2 of the Defamation Act 1952 (UK) to which the above reference relate is in *pari materia* with s. 5 of the Defamation Act 1957. In the *Annotated Statutes of Malaysia*, 1996 Issue, MLJ, with regard to the expression "disparage the plaintiff in his office" the learned author stated, at p. 7, thus:

> Disparage the plaintiff in any office: The common law distinguished between an office of profit and office of honour or credit. An office of profit is one which carry with it a salary or other remuneration while an office of honour is one one without remuneration. The term used here seems to cover both an office of profit and an office of honour.

In my view, the question as to whether any or all of the designation or post held by the plaintiff as pleaded in the statement of claim fall under the category office, trade or business cannot be determined solely on the pleading. Such determination requires further evidence which can only be adduced by examination of witnesses at a trial. Likewise the question as to whether the words complained of will disparage the plaintiff in such capacity is also triable issues to be determined upon consideration of the context of the words and the circumstances in which the same were so uttered. For the reason stated above this last issue cannot in my view be used as a ground for striking out the plaintiff's action.

In the circumstances I dismiss the defendant's application herein with costs to be taxed unless otherwise agreed.